



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

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**DECISION OF THE BOARD**

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Mailed and Filed: MAY 01, 2023

IN THE MATTER OF:

Appeal Board No. 628094

PRESENT: JUNE F. O'NEILL, MEMBER

The Department of Labor issued the initial determination holding the claimant eligible to receive benefits. The employer requested a hearing and objected contending that the claimant should be disqualified from receiving benefits because the claimant lost employment through misconduct in connection with that employment and that wages paid to the claimant by such employer should not count in determining whether the claimant files a valid original claim in the future.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed February 6, 2023 () (inadvertently recited as February 3, 2023), the Administrative Law Judge sustained, effective August 3, 2022, the employer's objection and overruled the initial determination.

The claimant appealed the Judge's decision to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following

**FINDINGS OF FACT:** The claimant was employed as a security officer by the employer, a security services business, for two years through August 2, 2022. His duties included patrolling clients' premises, assessing visitors and exits. The employer's Anti-Harassment Policy indicated: relationships in the office should be business-like; harassment was prohibited; sexual harassment included "unwelcome sexual advances"; and harassment would be subject to

disciplinary action. On November 10, 2020, the claimant received the employer's policy.

On June 23, 2022, the employer received a report from a client's employee that the claimant engaged in unprofessional behavior by having an unwanted conversation with her at the worksite. On June 24, 2022, the employer issued a final written warning to the claimant indicating he was to demonstrate immediate improvement in his interactions with others including clients' employees and social interaction required mutual interest. The claimant was given a copy of the employer's Non-Harassment and Sexual Harassment Policy; was ordered to take a training course; and the employer reserved the right to impose further discipline including suspension without pay and discharge. In July 2022, the employer reassigned the claimant to another location.

In late July 2022, the claimant mailed a package which contained a journal and letter to a different client's employee (KS) from his prior worksite. KS and he had been in contact with each other via social media. On July 29, 2022, KS reported to the employer's Director that the claimant had sent her a package which she did not want to open but she was not making a formal complaint about him.

On August 2, 2022, the employer's Human Resources Director and Account Manager met with the claimant and he admitted he had sent the package. The employer discharged the claimant for a final incident of unwanted contact with a client's employee in violation of its policies.

**OPINION:** The credible evidence establishes the employer discharged the claimant because it concluded that he had engaged in unwanted contact with a client's employee (KS). We credit the claimant's firsthand testimony that he was in contact with KS on social media and he did not think he was prohibited from sending KS a package at her workplace. We note that KS did not wish to make a formal complaint. We find that the employer's policy and written warning did not sufficiently place the claimant on notice that his behavior toward KS would jeopardize his employment. While the claimant may have exhibited poor judgment in sending KS a package to her workplace, we conclude that his doing so does not constitute misconduct for unemployment insurance purposes.

**DECISION:** The decision of the Administrative Law Judge is reversed.

The employer's objection, that the claimant should be disqualified from receiving benefits because the claimant lost employment through misconduct in connection with that employment and that wages paid to the claimant by such employer should not count in determining whether the claimant files a valid original claim in the future, is overruled.

The initial determination, holding the claimant eligible to receive benefits, is sustained.

The claimant is allowed benefits with respect to the issue decided herein.

JUNE F. O'NEILL, MEMBER